

The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 35 ILCS 105/3 (1996 State Bar Edition) (This is a GIL).

July 13, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated June 4, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are having to pay double tax. We have a sales tax & a State income tax. This is wrong, & I protest it. We didn't have State income tax years ago.

The Retailers' Occupation Tax Act imposes a tax on persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption and is measured by the seller's gross receipts from sales made in the course of such business. See the enclosed copy of 86 Ill. Adm. Code 130.101. "Gross receipts," means all of the consideration actually received by the seller, except traded-in tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 130.401. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition). The basic purpose of the Use Tax Act is to complement the Retailers' Occupation Tax Act by preventing evasion of tax on out-of-State purchases and to protect Illinois retailers from the competitive advantage held by out-of-State retailers who, under their state law, are not required to collect sales tax from Illinois purchasers. Combined, the Retailers' Occupation Tax Act and the Use Tax Act are commonly referred to as a "sales tax". The Income Tax Act imposed a tax measured by net income on every individual, corporation, and trust and estate on the privilege of earning or receiving income in or as a resident of this State. Section 201 of the Income Tax Act, 35 ILCS 5/201 (1996 State Bar Edition), provides that the income tax is imposed "in addition to all other occupation or privilege taxes imposed by this State or by any municipal corporation or political subdivision thereof".

The Retailers' Occupation Tax Act has been held to be a constitutional imposition of tax. See Reif v. Barrett, 1933, 188 N.E. 899, 355 Ill. 104; Modern Dairy v. Department of Revenue, 1952, 108 N.E. 2d 8, 413 Ill. 55. Further, the Retailers' Occupation Tax Act is not invalid for lack of uniformity or as resulting in double taxation. See People v. Werner, 1936, 364 Ill. 594, 5 N.E.2d 238. The Use Tax Act has been held to be constitutional. See Burgess-Norton Mfg. Co v. Lyons, 1957, 11 Ill.2d 294, 143 N.E.2d 46, appeal dismissed 78 S.Ct.

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142, 355 U.S. 65, 2 L.Ed.2d 106. The Illinois Income Tax Act has been held to be constitutional. See People v. Wolfe, App.4 Dist. 1980, 42 Ill. Dec. 648, 86 Ill.App.3d 1134, 409 N.E.2d 143; Thorpe v. Mahin, 1969, 43 Ill.2d 36, 250 N.E.2d 633.

The imposition of the Retailers' Occupation Tax, the Use Tax and the Income Tax does not result in double taxation. The taxes are imposed on different transactions. As stated above, the Retailers' Occupation Tax is imposed on the occupation of retailing. The Use Tax is imposed on the use or consumption of tangible personal property in Illinois. While these two taxes are associated with the sale and purchase of tangible personal property, the Illinois Income Tax is imposed upon the privilege of earning or receiving income in or as a resident of Illinois. Further, the Income Tax Act specifically provides that it is assessed in addition to all other occupation and privilege taxes imposed in Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.